

(1960) 04 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1562 of 19 (sic) 6

Jagdish Pratap Sahi

APPELLANT

Vs

Collector and Deputy Commissioner and Another

RESPONDENT

Date of Decision : 07-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 30 AWR 412

Hon'ble Judges : V. Bhargava, J;J. Sahai, J

Bench : Division Bench

Advocate : R.L. Gulati, for the Appellant; K.B. Asthana, Jr. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V. Bhargava, J.—By this petition Under Article 226 of the Constitution the Petitioner has prayed for the issue of various writs to quash certain proceedings which are being taken against the Petitioner for recovering certain amounts under the UP AIT Act. For convenience we are not reproducing the prayers as they have been put in the petition and prefer to put those prayers in a clearer form so as to bring out the points that really call for decision.

2. In effect, the prayers, taken together amount to a request to this Court to issue appropriate writs by which all proceedings which are being taken against the Petitioner for recovery of a sum of Rs. 17,674/5/0 be quashed. This sum of Rs. 17,674/5/0 consists of three items. One amount is a sum of Rs. 13,274/0/0 being the second instalment of the agricultural income tax assessed on the Petitioner by an order dated 13-10-1952. The next sum of Rs. 1,100 is being recovered as part of the penalty due from the Assessee u/s 31 of the UP AIT Act because of default of the Petitioner in paying the first instalment of the tax assessed by the order dated 13-10-1952. The third sum of Rs. 3,300 similarly purports to be penalty under the same provisions of law for committing default in paying the second instalment of the tax due under the same order of assessment

dated 13-10-1952. In dealing with this petition, we consider that the proceedings relating to the two amounts sought to be recovered as penalty can be dealt with together on one basis while the proceedings being taken for recovery of the sum of Rs. 13,274/5/0 alleged to be due as second instalment of the tax assessed on 13-10-1952 can be separately dealt with.

3. So far as the two amounts of penalty are concerned, amongst other grounds, one ground raised by the Petitioner was that these penalties were imposed without giving any opportunity to him to show cause against the imposition of penalty. In view of this ground, we called upon learned Counsel for the opposite parties to point out to us the orders u/s 31 of the Act by which these penalties had been imposed and learned Counsel was unable to point out any such orders. Certain orders were brought to our notice but none of them could be held to be orders imposing penalty u/s 31 of the Act. The orders that have been brought to our notice are those which direct recovery of the penalty as arrears of land revenue. As an example, with respect to the sum of Rs. 3,300 sought to be recovered as penalty for committing default in paying the second instalment, the order relied upon is an order of the Dy. Commissioner of Sultanpur dated 22-4-1953. The copy of that order as reproduced in the counter affidavit translated in English would read as follows:

The second instalment and Rs. 3,300 penalty be realised very soon as arrears of land revenue from the Petitioner.

4. This language of the order clearly indicates that it was a mere direction as to the manner in which the second instalment and the penalty were to be realised and it was not an order imposing the penalty. Under the scheme of the UP AIT Act, there has to be first an order imposing the penalty u/s 31 followed by an order directing its recovery as arrears of land revenue u/s 32. This is even further clarified by the provisions of sub Rules (3) and (4) of Rule 28 of the rules framed under that Act. When the Act and the rules themselves clearly required two separate orders to be made, one imposing penalty u/s 31 and the other directing the recovery of the penalty as arrears of land revenue u/s 32, an order of the type relied upon by the opposite parties quoted above can only be held to be an order u/s 32 which order could not have been competently passed unless there was a prior order of imposition of tax u/s 31. Similar is the position with regard to the imposition of the penalty out of which the sum of Rs. 1,100 is sought to be recovered at this stage. The proceedings for recovery of these amounts of penalty are, therefore, not based on any orders imposing the penalties u/s 31 of the Act and consequently, all these proceedings are void and must be restrained.

5. So far as the amount of second instalment of the tax assessed on 13-10-1952 which is now being sought to be recovered is concerned, there is no such difficulty. That amount is being recovered under a valid order of assessment dated 13-10-1952 and the validity of that order has not even been challenged in the petition before us. The recovery of that amount is challenged on the

alternative ground that the proceedings which are being taken for its recovery are time barred in view of the provisions of Sub-section (2) of Section 32 of the Act which lays down that no proceedings for the recovery of any sum payable under the Act shall be commenced after the expiration of one year from the date on which the last instalment fixed u/s 30 falls due. It has been contended on behalf of the Petitioner that the last of the dates mentioned in Sub-section (2) of Section 32 of the Act is 9-6-1953 when the last instalment of the tax assessed by the order of 13-10-1952 fell due. It was, therefore, urged that no proceedings for recovery of this amount of tax could have been commenced validly after 8-6-1954 and its proceedings which are being taken under the subsequent orders dated 29-6-1956 and 2-7-1956 are time barred. It is, further, merged that the order of the Revision Board dated 31-1-1956 holding that recovery proceedings in respect of the second instalment were still within time and could be taken was incorrect. On behalf of the opposite parties, however, reliance (sic) placed on the order dated 22-4-1953 which has been referred to above when dealing with the case of the Petitioner about recovery of penalty. That order as quoted above would show that it consisted of two parts. The second part of the order relating to the direction for recovery of penalty has already been held by us to be void as no penalty order had been passed u/s 31. The first part of that order directs recovery of the amount due as second instalment. That order was thus an order which commenced the proceedings for recovery of the amount of the second instalment and the manner of recovery laid down in the order was that it should be recovered as arrears of land revenue. That order, however, could not be pursued further for several years, because, in the mean time, proceedings had been taken in this Court at the instance of the Petitioner which disentitled the opposite parties from continuing those proceedings for recovery. On 20-4-1953, a petition under Article 226 of the Constitution was presented by the Petitioner to this Court and on the same day a Bench of this Court made a direction staying proceedings for recovery of the tax. The tax which was referred to in that petition included the second instalment of the tax due under the order dated 13-10-1952. It is stated in the counter affidavit that one copy of that order for stay passed by this Court which was sent direct by the Court to the Deputy Commissioner, Sultanpur, was received by him on 22-4-1953 but at the same time it is stated that the order directing recovery of the tax as arrears of land revenue had already been made earlier on that day in ignorance of the stay order of this Court. It is true that the counter affidavit does not in plain words say that the stay order of this Court was received by the Dy. Commr. after he had already passed the order of 22-4-1953 directing recovery as arrears of land revenue but the way in which the facts have been put in the affidavit leaves no room for doubt that according to the facts given in the affidavit, the copy of the order sent by this Court was received after that order for recovery had been made. A second copy of that order was received by the Dy. Commr. on 24-4-1953. It appears that, after the stay order was made by this Court, the Petitioner obtained a copy of it and filed an application on 21-4-1953 accompanied by that copy drawing attention of the Dy. Commr. to the stay order of this Court. That

application, however, could not be presented to the Dy. Commr. on 21-4-1953 as he was absent and was instead presented who presumably was in charge of his current duties. The Judicial Officer in the Court of a Judicial noted its presentation and made an order passing it on to the Dy. Commr. In the office of the Dy. Commr. it appears, that that application was received on 24-4-1953 so that the Dy. Commr. himself only came to know of the order on 24-4-1953. By that time the Dy. Commr. had already received a copy of the stay order of this Court earlier on 22-4-1953 and it was for this reason that the proceedings were kept stayed at the stage at which they had arrived when the Dy. Commr. had passed the order dated 22-4-1953 directing the recovery of the amount as arrears of land revenue. Learned counsel for the Petitioner urged before us that we should not believe the assertion made in the counter affidavit that in fact the copy of the order of this Court was received by the Dy. Commr. only after he had made the order of recovery on 2-4-1953, but we see no reason to accept this contention particularly in a petition under Article 226 of the Constitution in which facts are not to be investigated and in which decision has to be given on the basis of the admitted facts. Learned Counsel for the Petitioner also advanced an alternative argument that, even if it be held that the Dy. Commr. had not himself received the copy of the order before he passed the order of recovery on 22-4-1953, its receipt by the Judicial Officer should be considered as enough to oust his jurisdiction. This is a point which we cannot accept. The jurisdiction is not ousted at all by a stay order. All that a stay order does is to analyse the powers of the officer against whom it is directed and to restrain him from using those powers. If those powers are used in spite of that order of restraint, in appropriate cases such orders may have to be vacated and in a case of the worst type it may even be possible to hold that the action taken in exercising the powers may amount to contempt of the Court which issued the stay order. The exercise of the power, however, does not become an exercise of the power without jurisdiction. The exercise of power is not without jurisdiction even after knowledge of the stay order has been conveyed to the officer exercising the power, much less so before the information is conveyed to him. This view of ours is fully supported by a decision of a Full Bench of this Court in Pursotam Saran v. Brahmanand. In this case, the order of 22-4-1953 was not void at initio when passed. Of course if the part of the order directing recovery of penalty had not been otherwise void and could have been relied upon as an order imposing penalty, it might have been appropriate for us to set aside that part of the order. But so far as the part of the order directing recovery of the tax under the assessment order dated 13-10-1952 is concerned, there is no reason to hold that that order should be vacated. That order merely commenced proceedings for recovery and was an order without jurisdiction so that further proceedings in pursuance of it would not be barred by limitation.

6. One more prayer that has been made in this petition is that the Petitioner should have been given the relief under Rule 8(a) of the rules framed under the UP ZA and LR Act when he made an appropriate application praying that this

amount of tax which was due for a period prior to the date of vesting should be realised by being set off against the compensation due to him under the ZA and LR Act. This prayer was refused by the Collector and Dy. Commr. Sultanpur, by an order dated 23-5-1956 and a prayer has been made for vacation of that order. The refusal as appears from the order was based on the ground that the tax was due for the post-vesting period. On what basis it was said that the tax is due far the post vesting period is not disclosed in that order nor are any facts given in the counter affidavit showing that this tax being sought to be recovered is for a period subsequent to the date of vesting. On the other hand, the Petitioner has filed a copy of a judgment of the Agricultural Income Tax Board dated 31-1-1956 which was directed against proceedings for recovery of various amounts including this amount of tax and in that judgment the Board has clearly mentioned that the assessment order which was passed on 13-10-1952 had assessed the Petitioner to agricultural income tax for the year 1359F. The whole of the year 1359 Fasli was prior to the date of vesting as the last day of that year was 30-6-1952 and the date of vesting was 1-7-1952. In the circumstances, the Petitioner was entitled to the relief claimed by him under Rule 8(a) of the rules framed under the ZA and LR Act It was urged by learned Counsel for the opposite parties that this right could be claimed only without prejudice to the right of the State Government to take proceedings for recovery of this tax by other means and consequently it must be held that there was no compulsion on the opposite parties to grant this relief. We are unable to accept this contention. The portion of the rule which lays down the manner of recovery by setting off towards compensation due under the ZA and LR Act is in mandatory from laying down that the Collector shall realise the tax by that means. That mandatory direction has to be carried out. The direction is to be carried out without prejudice to other means of recovery in the sense that other means of recovery can be continued until this means of recovery finally becomes effective. It does not mean that the Collector has the discretion to refuse this request for realisation by setting off towards the compensation. Of course, once the tax is actually realised by this means, proceedings taken by the other mean will have to stop. On the other hand, if some tax is recovered by other means before effect can be given to set off under Rule 8(a) that recovery would not become void. In this light, in the present case, since the sum now being sought to be recovered is still due, the Petitioner is entitled to claim the relief under Rule 8(a).

7. In these circumstances we allow the petition partly to the extent that we quash all proceedings for recovery of the amounts of penalty sought to be recovered from him viz., the amounts of Rs. 3,300/- and Rs. 1,100/-. The proceedings for the recovery of the amount of second instalment of the tax due under the order dated 13-10-1952 which is a sum of Rs. 13,274/5/- can continue but in those proceedings the relief claimed by the Petitioner under Rule 8(a) of the ZA and LR Rules must be granted in the manner indicated by us above. Let appropriate orders or directions issue to this effect. Considering that the major part of the claim of the Petitioner has been accepted by us we direct that the

Petitioner will get costs of this petition which we fix at Rs. 200/-.